

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

No. 7:14-CV-36-FL

RETIREMENT COMMITTEE OF DAK
AMERICAS LLC, as Plan Administrator
of the DAK Americas LLC Pension Plan;
and TRANSAMERICA RETIREMENT
SOLUTIONS CORPORATION,

Plaintiffs,

v.

ORDER

DAVID W. ALLEN, MICHAEL LYNN
BASS, JOSEPH ALEXANDER
BELLAMY, MARK STEPHEN
BREWER, JEROME BRYANT,
HAROLD E. CORBETT, KELVIN L.
GALLOWAY, WARREN ALBERT
GARRISON, JAMES F. HOLLAND,
WILLIAM LACEY NELSON, SIDNEY
HUGH RHODES, JIMMIE RAY
SELLERS, MENDELL W. SMITH,
RODNEY B. SMITH, and OTELLA
IRENE WEBB,

Defendants.

This matter comes before the court on motion by defendant Rodney B. Smith to dismiss for failure to state a claim upon which relief may be granted, pursuant to Federal Rule of Civil Procedure 12(b)(6) (DE 54). Plaintiff responded to the motion and defendant Smith replied. In this posture, the motion to dismiss is ripe for ruling. However, defendant Smith also recently filed, on February 17, 2015, a motion for summary judgment (DE 130). In his memorandum in support thereof, defendant Smith references and incorporates the arguments made in support of his motion to dismiss, while also raising further facts and details in support of his motion for summary

judgment. (See, e.g., DE 139 at 10-11, 27 n. 3). Where defendant Smith's arguments in support of summary judgment reference and incorporate the arguments made in support of his motion to dismiss, in the interest of efficient administration of the court's docket, the court will consider defendant Smith's arguments raised in support of his motion to dismiss also in support of his motion for summary judgment. Accordingly, the court DISMISSES AS MOOT defendant Smith's motion to dismiss (DE 54).

SO ORDERED, this the 2nd day of March, 2015.

A handwritten signature in black ink, reading "Louise W. Flanagan". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

LOUISE W. FLANAGAN
United States District Judge